



| Sr. No. | Date                    | Orders  |
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|         | %<br><br><br><br>+<br>* | <p data-bbox="470 275 667 304">19.09.2002</p> <p data-bbox="470 338 1390 434">Present: Mr.Santosh Aggarwal for the petitioner<br/>Mr.Ajay Jha with Mr.Sanjeev Khurana for<br/>Income-tax Department</p> <p data-bbox="470 472 646 501"><u>CW 319/88</u></p> <p data-bbox="470 533 1528 633">The petitioner in this writ petition has interalia prayed for the following reliefs:-</p> <p data-bbox="683 667 1474 931">(a). an appropriate Writ, Order or direction in the nature of Certiorari and/or otherwise quashing the action of the Respondent No.2 in adjusting the refund of Rs.56,45,790/- found due for the assessment year 1982-83 under the Income-tax Act towards the purported demand of Sur-tax for the year 1984-85;</p> <p data-bbox="683 965 1474 1229">(b). an appropriate Writ, Order or direction in the nature of Mandamus directing the Respondents to act according to law and refund the amount of Rs.56,45,790 found due to the Petitioner for the assessment year 1982-83 forthwith and not to harass the Petitioner in any manner;</p> <p data-bbox="683 1263 1474 1359">(c). such other Order or Orders as may do complete justice to the case of the Petitioner be made.</p> <p data-bbox="683 1393 1433 1422">(d). Costs of the Petition be awarded.</p> <p data-bbox="470 1456 1536 2085">Having regard to the question involved in this writ petition, it is not necessary to state the facts of the matter in detail. It is suffice to point out that while giving effect to the orders of assessment for the year 1982-83, the Assessing Officer in terms of his order dated 17/10/1987 directed refund which was due to the petitioner to be adjusted against the payment of Sur-tax for the year 1984-85. Similarly, while passing order dated 28/10/1987 for the assessment year 1983-84, the demand due to the petitioner was</p> |

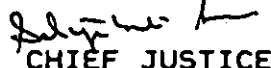
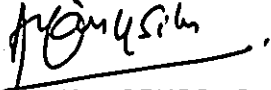


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|         |      | <p style="text-align: right;">X</p> <p>adjusted against the Income-tax demand of 1978-79 and Sur-tax demand of 1984-85:</p> <p>Such an order could be passed only in terms of Section 245 of the Income-tax Act. The said section reads thus:-</p> <p>245. Where under any of the provisions of this Act, a refund is found to be due to any person, the [Assessing] Officer, [Deputy Commissioner (Appeals)], Commissioner (Appeals) or [Chief Commissioner or Commissioner], as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.</p> <p>A bare perusal of the afore-mentioned directions leaves no matter of doubt that such an adjustment by way of set-off would be permissible only on intimation thereof to the assessee as regards action proposed to be taken thereunder. In that view of the matter, on a complaint made by the firm, there cannot be any doubt, whatsoever, that before any such adjustment is made, the assessee was required to be given an intimation in writing so that he could be given an opportunity of hearing on the proposed action to be taken in terms thereof. The question is now covered by a decision of this Court in <u>Vijay Kumar Bhati vs. Commissioner of Income-Tax &amp; Anr.</u> 205 ITR 110 wherein the following is observed:-</p> <p style="text-align: center;"><del>There is nothing on the record or even in</del></p> |



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|         |      | <p style="text-align: right;">①</p> <p>the letter to suggest that before passing the order, the provisions of section 245 were complied with. For the purpose of any set off an intimation has to be given in writing to the assessee of the action proposed to be taken under this section. Earlier to this order, it has never been the case of the Revenue to claim any set off. This order purporting to be under section 245 of the Act is neither fair, nor just, nor reasonable and has to be ignored. This order also shows scant respect by the authorities for the pendency of these proceedings in this court and this does not commend itself to us, to say the least.</p> <p>Further, there is a decision of Karnataka High Court in the case of <u>Fosroc Chemicals(India) Ltd. vs. Commissioner of Income-tax &amp; Another</u> 248 ITR 607, wherein it was held that the provision of Section 245 is mandatory in nature. The following was observed in this case:-</p> <p>A reading of the section would indicate that for the purpose of any adjustment of the amount due to the assessee by way of refund against an outstanding demand due from the assessee to the Revenue an intimation in writing is required to be given to the concerned person of the action proposed. Proposed action would mean a notice before making the adjustments and not an intimation of making the adjustment. It is not in the nature of information. It has to be an intimation that the Revenue proposes to adjust the amount of refund due to the assessee towards the amount of tax due from the assessee. An order passed purporting to set off an amount of refund due to the assessee without a prior intimation would be against the express provisions of law and therefore bad in law. The provisions of section 245 are mandatory in nature.</p> <p>For the reasons afore-mentioned, that part of</p> |



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|         |      | <p>the order whereby the refund due to the petitioner had been adjusted and set-aside, leaving the parties to take appropriate action as is permissible under law.</p> <p><i>The writ petition is, thus, dismissed.</i></p> <p>No order as to costs.</p> <p style="text-align: right;"> <br/>           CHIEF JUSTICE<br/> <br/>           A.K. SIKRI, J         </p> <p>September 19 2002<br/>tp</p> |